

REMARKS

Reconsideration and withdrawal of the requirement for restriction are respectfully requested in view of the remarks herewith.

The August 19, 2004 Office Action required an election under 35 U.S.C. § 121 from:

- Group I:** Claims 1-26, 51 and 52, drawn to a compound of the claimed formula and method of making, classified in class 528;
- Group II:** Claims 27-40, 53 and 54, drawn to a compound of the claimed formula and method of making, classified in class 528;
- Group III:** Claims 41-50, 55 and 56, drawn to a compound and method of making, classified in class 528;
- Group IV:** Claims 57-61, drawn to a conjugate of the claimed formula, classified in class 514; and
- Group V:** Claims 62-67, drawn to a conjugate of the claimed formula, classified in class 514.

In response to the Restriction Requirement, Applicants provisionally elect Group I, claims 1-26, 51 and 52, for further prosecution in this application.

This election is made *with traverse* and is made without prejudice to Applicants' right to file divisional applications directed to the non-elected subject matter. It is respectfully requested that the restriction requirement be favorably reconsidered and withdrawn.

Applicants respectfully urge that the Restriction Requirement does not establish that searching all the inventions would constitute an undue burden to the Patent Office. Moreover, Applicants urge that the Restriction Requirement is contrary to public policy. Accordingly, Applicants submit that the Restriction Requirement is improper and should be withdrawn or at least modified.

The MPEP lists two criteria for a proper restriction requirement. First, the invention must be independent or distinct. MPEP § 803. Second, searching the additional invention must constitute an undue burden on the examiner if restriction is not required. *Id.* The MPEP directs the examiner to search and examine an entire application “[i]f the search and examination of an entire application can be made without serious burden, ... even though it includes claims to distinct or independent inventions.” *Id.*

Applicants urge that the Restriction Requirement does not meet the second of these criteria as the search for the groups overlap. For example, Groups I, II and III are classified in class 528; and Groups IV and V are classified in class 514. Therefore, searching the claims of all five Groups would not pose an undue burden on the Examiner.

Further, Applicants respectfully disagree with the Examiner’s bases for restriction. The present claims clearly represent a web of knowledge and continuity of effort that merits examination in a single application.

Further, it is respectfully urged that restricting the claims in the manner suggested in the Restriction Requirement constitutes an undue burden to Applicants as well as to the public. The cost of prosecuting and maintaining additional patents is unreasonable in view of the fact that the five Groups are so closely related. Further, the public is inconvenienced as they will not know whether or not Applicants will file a divisional application to the remaining subject matter. Accordingly, the public will not know if they can practice the remaining invention without infringing future patent applications.

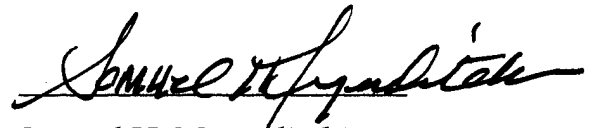
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Accordingly, in view of the foregoing, reconsideration and withdrawal of the restriction requirement are requested, and an early action on the merits is earnestly solicited.

A Petition for Extension of Time - 2 months - is enclosed. If any additional fees are deemed necessary, authorization is given to charge the amount of any such fee, or credit any overpayment, to Deposit Account No. 08-2525.

Respectfully submitted,
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